IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2332 OF 2001

The General Oil Depot ..Petitioners

Versus
The Municipal Corporation of
the City of Kalyan Dombivali & Ors. ..Respondents

Mr. Rahul D. Oak i/b.Mr. R.S. Datar for the Petitioner.
Mr. C.R. Sonawane, AGP for Respondent Nos. 3 and 4.

CORAM: F.I. REBELLO &
DR. D.Y.CHANDRACHUD, JJ.
DATE : 19th January,2006

P.C.:

. Rule. Heard forthwith.

2. Though the respondent NO.5 has been served no appearance has been put up on behalf of respondent No.5. The petitioner approached this Court on the ground that the respondent No.5 was putting up illegal construction. This Court by order dated 29th June, 2006 noted the affidavit in reply filed by the Corporation that the structure was illegal and the notice had been issued to respondent No.5. The statement made on behalf of the Corporation also noted that the Corporation will take appropriate action in law against the person raising the illegal structure. The matter was thereafter adjourned to enable the Court to know what steps have been taken. The matter thereafter has come up from time to time and it appears that thereafter no orders have been passed. A reply has also been filed by R.N.Garud, Tahasildar,

Kalyan wherein it is set out that the land belongs to the Government. In the affidavit in reply filed by Ravindra Shamrao Puranik, Executive Engineer (Project) of the Corporation it is pointed out that the land belongs to respondent Nos. 3 and 4. In para.5 it is set out that the respondent No.5 is directed to remove the structure and that the said respondent No.5 has given an undertaking that he will remove the existing construction.

3. To the affidavit of Pramod K. More, "C"Ward Officer is annexed a representation made by the respondent No.5 along with the order of the Apex Court. That order prima facie is in respect of eviction of persons who are licensed to hold Zhunka Bhakar Kendra in licensed premises. In the instant case apparently the said judgment does not cover this case and the petitioner has approached this Court on the ground that the respondent NO.5 has put up illegal construction. However, the petition is disposed of with the following directions:-

(1) The respondent Nos. 1 and 2 to issue notice to the petitioner and respondent No.5. Respondent Nos. 1 and 2 to consider the undertaking given by the respondent No.5 to remove the illegal structure and if the structure is not removed to remove the same subject to what is set out hereinafter.

(2) The respondent No.5 be called upon to give his say in so far as the order of the Apex Court in Special Leave to

Appeal (Civil) No.8352 of 2001 and if he is a party to the same. If the respondent No.5 is a party to the same then not to pass any order till the judgment of the Apex Court. However, if the respondent No.5 is not a party to the same then that order will not cover the respondent No.5 as the present petition is in the matter of illegal construction and not protection of Zhunka Bhakar Stall in licensed premises.

(3) It is also mentioned on behalf of the petitioners that the order in Civil Appeal No.35 of 2001 as set out in para.2 of the affidavit of R.S. Puranik, has gone in favour of the petitioners herein. The said aspect may also be considered by the Respondent Nos.1 and 2.

(4) The decision to be taken within 3 months on a copy of this order being served by the Petitioner on Respondent No.2.

(5) Rule made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)

(DR. D.Y.CHANDRACHUD, J.)